

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION**

THE CROW CREEK SIOUX TRIBE, a
federally-recognized Indian tribe,

v.
Plaintiff,

THE BUREAU OF INDIAN AFFAIRS
OFFICE OF JUSTICE SERVICES,

Defendant.

3:24-cv-3015

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF**

INTRODUCTION

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief. Plaintiff the Crow Creek Sioux Tribe (the “Tribe”) seeks the immediate processing and timely release of agency records from Defendant the Bureau of Indian Affairs Office of Justice Services (“BIA-OJS”).

2. On January 26, 2024, the Tribe submitted a FOIA request (the “Request”) to BIA-OJS seeking records relating to the budget for the Crow Creek Agency BIA-OJS Law Enforcement Services for fiscal years 2018-2023. The Request seeks information necessary for the Tribe to understand and determine the categories and amount of funding for law enforcement services for the Tribe.

3. To date, BIA-OJS has not released any responsive records.

4. The failure of BIA-OJS to timely identify and release responsive records to the Tribe is consistent with Defendant’s overall failure to fulfill its treaty and trust responsibilities to

the Tribe to provide adequate and effective law enforcement services. This negligence has resulted in a dire public safety crisis on the Tribe's Reservation.

5. The Tribe now asks the Court for an injunction requiring BIA-OJS to immediately process the Request.

JURISDICTION AND VENUE

6. The Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). The Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

7. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

8. Plaintiff the Crow Creek Sioux Tribe is a federally-recognized Indian tribe, recognized to have the immunities and privileges available to federally-recognized Indian tribes by virtue of their government-to-government relationship with the United States, as well as the responsibilities, powers, limitations, and obligations of such Indian tribes. *See Indian Entities Recognized by and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 89 Fed. Reg. 944, 945 (Jan. 8, 2024).

9. Defendant BIA-OJS is “the exclusive federal entity charged with maintaining law and order on Indian reservations” that “provides law enforcement services directly to tribes by OJS personnel or by Tribal Police through a self-determination contract or compact.” U.S. Dep’t of the Interior, *Bureau of Indian Affairs Office of Justice Services*, <https://www.doi.gov/oles/bureau-indian-affairs-office-justice-services> (last visited Feb. 29, 2024).

10. Defendant BIA-OJS is a component of the Bureau of Indian Affairs and an agency within the meaning of 5 U.S.C. § 552(f).

FACTUAL BACKGROUND

11. Like many tribal nations across the United States, the Tribe is facing an ongoing public safety crisis on its Reservation that has caused the loss of life and continues to endanger the health and welfare of the Tribe and its members.

12. The Tribe's public safety crisis is a result of the failure of BIA-OJS to adequately carry out its treaty and trust obligations to provide adequate law enforcement services to the Tribe. BIA-OJS law enforcement services on the Tribe's Reservation have been woefully inadequate for a number of years, despite the Tribe's countless attempts to induce action by BIA-OJS to remedy poor staffing, funding, equipment, training, and dispatch response times of its officers.

13. On October 17, 2023, Tribal Chairman Peter Lengkeek and legal counsel for the Tribe met with Special Agent in Charge ("SAC") for District I of OJS, John Burge, to discuss the Tribe's urgent need for adequate law enforcement services on the Reservation.

14. SAC Burge and the Tribe's legal counsel met again on October 26, 2023, to further discuss the Tribe's public safety crisis. When discussing the Tribe's desire to obtain information and documents relating to BIA-OJS' budget for the Crow Creek Agency BIA-OJS Law Enforcement Services, SAC Burge indicated that he could provide the budget upon request by the Tribe. *See Exhibit 1.*

15. On November 10, 2023, legal counsel for the Tribe requested information and documents relating to the full budget for the Crow Creek Agency BIA-OJS Law Enforcement Services for fiscal years 2018-2023 from SAC Burge. *See Exhibit 2.*

16. SAC Burge did not respond to the November 10, 2023, request.

17. On December 8, 2023, legal counsel for the Tribe again contacted SAC Burge to renew the Tribe's request and inquire when the Tribe could expect a response. *See Exhibit 3.*

18. SAC Burge did not respond to the December 8, 2023, request.

19. On December 15, 2023, legal counsel for the Tribe made a final attempt to obtain a response from SAC Burge regarding the Tribe's request for information and documents relating to the full budget for the Crow Creek Agency BIA-OJS Law Enforcement Services for fiscal years 2018-2023. *See Exhibit 4.*

20. SAC Burge did not respond to the December 15, 2023, request.

21. On January 26, 2024, the Tribe submitted a FOIA request to BIA-OJS seeking the following records:

The full budget, and any documents relating thereto, for the Crow Creek Agency BIA-OJS Law Enforcement Services for fiscal years 2018-2023. This request includes:

- (1) Any and all sources of funds, including any grants or special funds; and
- (2) the Budget Execution Models for BIA-OJS District I for fiscal years 2018-2023, including but not limited to uniform patrol, dispatch/communications, corrections, and criminal investigations; and
- (3) any and all records that include the categories of funding for the Law Enforcement Program for the Crow Creek Sioux Tribe, including but not limited to employee benefit costs, employee bonuses, administrative staff, and any other category where BIA-OJS separates funding for expenditures used on behalf of the Crow Creek Sioux Tribe; and
- (4) any and all records that calculate Tribal Shares for the Crow Creek Sioux Tribe; and
- (5) funding calculations and amounts for the Missing and Murdered Unit that BIA-OJS uses on behalf of the Crow Creek Sioux Tribe for fiscal years 2018-2023; and
- (6) funding calculations and amounts for drug investigations that BIA-OJS uses on behalf of the Crow Creek Sioux Tribe for fiscal years 2018-2023; and

- (7) any and all records reflecting how BIA-OJS calculates the salary for each full-time law enforcement officer under uniform patrol.
22. On January 26, 2024, the Department of the Interior acknowledged receipt of the Request and assigned it reference number DOI-BIA-2024-000340.
23. On January 29, 2024, the Request was assigned for processing.
24. On February 5, 2024, SAC Burge confirmed to legal counsel for the Tribe that the Tribe's FOIA request had been received and was being processed. *See Exhibit 5.*
25. To date, BIA-OJS has not released any information or documents in response to the Request.
26. Under the statute, BIA-OJS has twenty (20) working days to respond to a request. *See 5 U.S.C. § 552(a)(6)(A)(i).* Far more than twenty (20) working days have passed since the Tribe submitted the Request. Thus, the statutory time-period has elapsed.
27. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), the Tribe is deemed to have exhausted its administrative remedies with respect to the Request upon BIA-OJS' failure to comply with the applicable time limit.
- CAUSE OF ACTION**
28. Plaintiff reincorporates the allegations in all preceding paragraphs.
29. Defendant is obligated under 5 U.S.C. § 552(a)(6)(A)(i) to make a determination and promptly produce documents responsive to the Tribe's Request within twenty (20) working days.
30. Defendant is obligated under 5 U.S.C. § 552(a)(3)(A) to make responsive records promptly available.
31. Defendant has failed to promptly produce responsive records.

32. Defendant's failure to make a determination within the statutory time frame and promptly produce responsive records violates 5 U.S.C. §§ 552(a)(3)(A) and (a)(6)(A)(i).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

1. Order Defendant to immediately process and release and responsive records;
2. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action; and
3. Grant such other relief as the Court deems just and proper.

Dated this 23rd day of May 2024.

CROW CREEK SIOUX TRIBE,
a federally-recognized Indian tribe,

By: /s/ Michelle M. Fox
Michelle M. Fox
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Fax: (602) 223-1739
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

THE CROW CREEK SIOUX TRIBE, a federally recognized Indian Tribe

(b) County of Residence of First Listed Plaintiff Buffalo County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michelle M. Fox, Cedar Tree Native Law
P.O. Box 637, Omaha, NE 68101

DEFENDANTS

THE BUREAU OF INDIAN AFFAIRS OFFICE OF JUSTICE SERVICES

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|---|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input checked="" type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> Product Liability		<input type="checkbox"/> 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee		<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence		<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		<input checked="" type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
IMMIGRATION				

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. § 552

VI. CAUSE OF ACTION

Brief description of cause:
Seeking immediate processing and timely release of agency records from BIA OJS.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE SIGNATURE OF ATTORNEY OF RECORD
May 22, 2024 /s/ Michelle M. Fox

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE